UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

ABPAYMAR, LLC, 1944 Woodcut
Drive Land Trust as Trustee

       Plaintiff,

v.   Case No: 2:21-cv-80-SPC-NPM

THE BANK OF NEW YORK
MELLON,

       Defendant.

_____/

ORDER[1]

Before the Court is Plaintiff's Motion to Vacate (Doc. 31). By endorsed order (Doc. 30), the Court struck Plaintiff's Notice of Voluntary Dismissal (Doc. 29) because it appeared Defendant answered (Doc. 5). But as Plaintiff notes, the answer was misfiled in this case. And Defendant has yet to file a responsive pleading or motion for summary judgment. So Plaintiff was free to voluntarily dismiss the suit. Fed. R. Civ. P. 41(a)(1)(A)(i); *Anago Franchising, Inc. v. Shaz, LLC*, 677 F.3d 1272, 1278 (11th Cir. 2012) (holding the dismissal is effective upon filing and requires no further court action). The fact that

---

[1] Disclaimer: Documents hyperlinked to CM/ECF are subject to PACER fees. By using hyperlinks, the Court does not endorse, recommend, approve, or guarantee any third parties or the services or products they provide, nor does it have any agreements with them. The Court is also not responsible for a hyperlink's availability and functionality, and a failed hyperlink does not affect this Order.

default was entered in state court does not impact this conclusion. *See PNC Equip. Fin., LLC v. IKZ, Inc.*, No. 2:13-cv-763-FtM-29CM, 2014 WL 4655441, at *1-2 (M.D. Fla. Sept. 17, 2014). The Motion, therefore, is granted.

Accordingly, it is now

ORDERED:

(1) Plaintiff's Motion to Vacate Endorsed Order Striking Notice of Voluntary Dismissal Without Prejudice (Doc. 31) is **GRANTED**. The Court's Order (Doc. 30) is **VACATED**.

(2) This action is **DISMISSED without prejudice**.

(3) The Clerk is **DIRECTED** to enter judgment, deny any pending motions as moot, terminate all deadlines, and close the file.

DONE and **ORDERED** in Fort Myers, Florida on March 4, 2021.

SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

Copies: All Parties of Record

2